Supreme Court, U.S.
FILED

JUN 23 2010

OFFICE OF THE CLERK

Case No. 10-15

IN THE

SUPREME COURT OF THE UNITED STATES

DR. MASSOOD JALLALI,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

WHETHER THE DISTRICT COURT'S ORDER DISMISSING PETITIONER'S COUNTERCLAIMS IS IMMEDIATELY APPEALABLE?

WHETHER THE DISTRICT COURT ERRED IN DISMISSING PETITIONER'S COUNTERCLAIMS?

CERTIFICATE OF INTERESTED PERSONS

There are no other persons having an interest in this case other than those listed in the caption of the case.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

CERTIFICATE OF INTERESTED PERSONS..... ii

TABLE OF CONTENTS iii

TABLE OF CITATIONS iv

PETITION 1

OPINION BELOW 1

STATEMENT OF JURISDICTION 1

CONSTITUTIONAL PROVISIONS INVOLVED 2

STATEMENT OF THE CASE AND FACTS..... 2

REASONS FOR GRANTING THE WRIT..... 7

CONCLUSION 11

TABLE OF CITATIONS

CASES

Broussard v. *Lippmall*,
643 F.2d 1131 (5th Cir. Unit A Apr. 1981) 6

Cohen v. Beneficial Industrial Loan Corp.,
337 U. S. 541 (1949) 9

Dickson v. Petroleum Conversion Corp.,
338 U.S. 507 (1950) 9

Digital Equipment Corp. v. Desktop Direct, Inc.,
511 U. S. 863 (1994) 10

Gillespie v. United States Steel Corp.,
379 U.S. 148 (1964) 9

Haney v *City of Cumming*,
69 F.3d 1098 (11th Cir. 1995) 6

Jallali v. Florida,
DC No. 0:09-cv-61900-MGC (filed 12/1/2009) 5

Jallali v. Nova Southeastern University, Inc.,
992 So.2d 338 (Fla. 4th DCA 2008),
cert. denied, 2009 WL 90331 (Fla. 2009) 4

Pitney Bowes, Inc, v. *Mestre*,
701 F.2d 1365 (11th Cir. 1983) 6

Swint v. Chambers County Comm'n,
514 U. S. 35 (1995) 10

Williams v, *Bishop*,
732 F.2d 885 (11th Cir. 1984) 6

STATUTES

28 U.S.C. §1254(1) 1

OTHER AUTHORITIES

The Fifth Amendment 2

The First Amendment 2

RULES

SUP. CT. R. 13.1 1

PETITION

Dr. Massood Jallali respectfully petitions the Supreme Court of the United States for a Writ of Certiorari.

OPINION BELOW

The decision of the Eleventh Circuit Court of Appeals, which denied rehearing is contained in "Appendix A"; the decision which dismissed Dr. Jallali's appeal is contained in "Appendix B". The order of the District Court denying motion for reconsider of order dismissing counterclaims is contained in "Appendix C"; the order dismissing Dr. Jallali's counterclaims is contained in "Appendix E".

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1) and PART III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The decision of the Eleventh Circuit Court of Appeals was entered on April 2, 2010. This petition is timely filed pursuant to SUP. CT. R. 13.1.

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The Fifth Amendment provides:

> "No person shall be deprived of life, liberty, or property, without due process of law..."

STATEMENT OF THE CASE AND FACTS

A. Preliminary Statement

Dr. Massood Jallali will be referred to by name or as "Defendant" throughout this brief. The United States of America will be referred to as "the United States" or as "Plaintiff" throughout this brief. Record references are cited to the docket sheet entry ("D._") and section and page number from the District Court below, and/or to the Appendix where suitable.

B. Factual Background

The United States filed a Complaint on October 3, 2008 against Dr. Jallali to recover proceeds from a student loan. The Complaint demanded judgment in excess of $500,000 for monies paid, in part, to Nova Southeastern University (as a student loan) on behalf of Dr. Jallali. (D.1, App. "G").

Dr. Jallali answered the Complaint asserting several affirmative defenses, some of which implicated Nova Southeastern University as a potential third-party (D.17, App. "F"). Dr. Jallali explained in his Answer to the Complaint that he denied that he "should be required to repay the value of the loan, in that a third-party Title IV Institution arbitrarily and capriciously refused to issue the degree which [Dr. Jallali] earned, for which third-party Title IV Institution received advanced payment from the proceeds of [Dr. Jallali's] student loan" (D.17, p.2).

Dr. Jallali identified a school, Nova Southeastern University (hereafter as "NSU"), as the third party Title IV Institution. Further, Dr. Jallali's Answer stated his intention to bring a third party complaint against NSU (D.17, p.31).

After Dr. Jallali answered the Complaint, Plaintiff brought an amended motion to dismiss Dr. Jallali's counterclaims and some of the affirmative defenses (D.26). The motion relied upon a state appellate court's reversal of an $819,000 jury verdict ("arbitrary and capricious") that Dr. Jallali obtained against NSU in Broward County, Florida.[1] On July 1, 2009, the district court granted Plaintiff's Amended Motion to Dismiss (D.27). Dr. Jallali's counterclaims were thereby dismissed (App. "E").

In the interim Dr. Jallali continued to perform a detailed investigation into the state court appellate panel (and staff), which yielded the following results: (a) Dr. Jallali discovered that appellate law clerk, Grace Murillo, who largely authored the opinion, received a BA from NSU, a law degree from NSU, and exclusive grants and monetary payments. (b) The appellate panel consisted of three judges. (c) One of the judges was Robert Gross; Grace Murillo was his judicial draft-clerk. (d) Another judge was Barry Stone, whose wife graduated from the NSU law

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[1]The United States asserted that res judicata and collateral estoppel barred Dr. Jallali from asserting affirmative defenses (and counterclaims) based upon acts adjudicated in *Jallali v. Nova Southeastern University, Inc.*, 992 So.2d 338 (Fla. 4th DCA 2008), *cert. denied*, 2009 WL 90331 (Fla. 2009). The United States motion to dismiss was premised almost exclusively on finality allegations in *Jallali*.

school, whose daughter was a graduate of NSU law school, and Judge Stone (himself) was also an adjunct professor at NSU. (e) In addition to these association-hurdles, Dr. Jallali discovered that approximately ¾ of the appellate division was infected with staff that were directly associated with NSU, whether by past employment, past schooling, or current financial obligations.

Dr. Jallali subsequently issued discovery requests (subpoenas for depositions with records) to: Grace M. Murillo, Rachel Jenny Glasser, Yelizaveta A. Bates, and Barry J. Stone. The depositions were scheduled to be taken on August 28 and 30, 2009.

The law clerks through the State filed for protective orders (D.33) and former judge Barry Stone moved to quash the discovery requests (D.34). Dr. Jallali objected and raised substantial concerns relating to preclusive or res judicata implications flowing from the allegedly tainted appellate ruling. A magistrate judge entered an order on September 11, 2009, quashing the subpoenas.[2] (App. "D").

Thereafter, Dr. Jallali's motion for reconsideration as to the order dismissing Dr. Jallali's counterclaims

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[2]After the magistrate denied Dr. Jallali basic discovery devices, Dr. Jallali turned his attentions to the State of Florida and focused on the duty of the State to provide a fair and impartial appellate panel. Thus, Dr. Jallali initiated a federal action in the U.S. District Court, Southern District of Florida. *Jallali v. Florida*, DC No. 0:09-cv-61900-MGC (filed December 1, 2009) (allegi..g Florida denied Dr. Jallali meaningful appellate review by failing to provide a neutral and detached appellate panel; re: §112.311, Fla. Stat.).

and some of his affirmative defenses came on before the court. On October 7, 2009, the district court entered an Order denying reconsideration of the Order Granting Plaintiff's Amended Motion to Dismiss (D.47). Dr. Jallali's counterclaims were fully disposed (App. "C").

Dr. Jallali filed a Notice of Appeal on December 1, 2009, as to the following: (a) Order Granting Plaintiff's Motion to Dismiss Defendant's Counterclaim, entered July 1, 2009; and (b) Order Denying Motion for Reconsideration, entered October 7, 2009.

After Dr. Jallali paid the filing fee in full and prepared payment for a transcript of proceedings, the Eleventh Circuit entered an order on January 25, 2010 (App. "B"), dismissing the appeal:

> "This appeal is DISMISSED, *sua sponte*, for lack of jurisdiction, The district court's order entered on July 2, 2009, that granted Appellee's "Amended Motion to Dismiss Counterclaim" and the order entered on October 8, 2009, that denied Appellant's motion for reconsideration are not final and immediately appealable because the orders did not dispose of all of the claims against all of the parties. *See* 28 U.S.C. §1291; Fed.R.Civ.P. 54(b); *Haney* v *City of Cumming,* 69 F.3d 1098, 1101 (11th Cir. 1995); *Williams* v, *Bishop,* 732 F.2d 885,885-86 (11th Cir. 1984); *Pitney Bowes, Inc,* v. *Mestre,* 701 F.2d 1365, 1368 (11th Cir. 1983); *Broussard* v, *Lippmall,* 643 F.2d 1131, 1133 (5th Cir. Unit A Apr. 1981)."

Dr. Jallali moved for an immediate rehearing, which the Eleventh Circuit denied on April 2, 2010 (App. "A").

This timely petition for certiorari review follows.

REASONS FOR GRANTING THE WRIT

AN IMMEDIATE APPEAL OVER THE BELOW RULINGS IS THE ONLY METHOD TO PRESERVE THE ADVERSARIAL TESTING PROCESS, PROMOTE JUDICIAL ECONCOMY, AND GUARANTEE PETITIONER'S FUNDAMENTAL RIGHT TO MEANINGFUL ACCESS.

This is the atypical case. The United States is seeking to collect upon a student loan, where monies were paid to a university that arbitrarily refused to issue a degree that Petitioner earned. Petitioner should not be forced to pay these monies back to the United States because he receives no benefit from the many years of study and sacrifice he underwent. If any remedy there should be a forgiveness of debt.

After the United States sued Petitioner he plead that the offending university's actions should be a viable defense to his own liability for repayment. Petitioner drafted affirmative defenses and announced intent to bring a third party complaint naming the offending university. In a prior proceeding the Petitioner had successfully sued the offending university and received a near-million dollar

judgment for conduct a jury coined arbitrary and capricious. That verdict was later overturned upon a technicality of law, not a factual variance.

Relying on *facts* related to the prior verdict, the petitioner advanced counterclaims and defenses to the complaint. The United States filed a dismissal motion, which the lower court granted. Today the petitioner has near-zero defenses and no counterclaims. Today the petitioner has no means to –the petitioner is without the right to point to the offending university and claim that the United States should take back the monies paid to the university from the university –not from the petitioner who was a victim of the university.

Unfortunately for the petitioner, the United States would rather sue your victim than the offending university. And so the United States has been put into a windfall position, as the only party with a claim or defense. Dr. Jallali has no access to discovery regarding NSU, no means of developing his affirmative defenses, no means of developing counterclaims (or even the use of discovery regarding NSU –no discovery regarding the appellate members who received financial compensation during the state appellate controversy between Dr. Jallali and NSU). Dr. Jallali will have no third party complaint because the district court's rulings have affirmatively ended that avenue. Indeed, the rulings which dismissed Dr. Jallali's counterclaim will be applied to his affirmative defenses and also will prevent Dr. Jallali from asserting a third party complaint against NSU. This is the very sense of finality.

Dr. Jallali proffers that review is appropriate

under the doctrine enunciated in *Gillespie v. United States Steel Corp.*, 379 U.S. 148 (1964). The *Gillespie* doctrine permits appellate review in a limited number of cases after a weighing of "'the inconvenience and costs of piecemeal review on the one hand and the danger of denying justice by delay on the other.'" *Id.* at 152-53 (quoting *Dickson v. Petroleum Conversion Corp.*, 338 U.S. 507, 511 (1950)).

Consistent with *Gillespie* is Dr. Jallali's need for immediate appellate review, lest Dr. Jallali will be prevented from filing a third party complaint, the district court will utilize the ruling which dismissed the counterclaim to thwart or moot Dr. Jallali's affirmative defenses; Dr. Jallali will, of course, be prevented in that action from obtaining reasonable discovery, all the while the United States will seek judgment for monies that NSU was paid. Analogous to *Gillespie*, the district court's rulings will effectively cut off Dr. Jallali from receiving the benefit of discovery or development of claims.

Although "final decisions" typically are ones that trigger the entry of judgment, they also include a small set of prejudgment orders that are "collateral to" the merits of an action and "too important" to be denied immediate review. *Cohen v. Beneficial Industrial Loan Corp.*, 337 U. S. 541, 546 (1949). Dr. Jallali's very unique procedural posture deserves the benefit of *Gillespie* and *Cohen*, the benefit of an immediate appeal.

Dr. Jallali submits that the justification for immediate appeal in this atypical case is sufficiently strong to overcome the usual benefits of deferring

appeal until litigation concludes. Leaning to this requirement is the fact that Dr. Jallali's dismissal and discovery complaints rest upon "important questions separate from the merits [of the case]." *Swint v. Chambers County Comm'n*, 514 U. S. 35, 42 (1995). Further, Dr. Jallali will suffer irreparable injury in the vindication of discovery devices, continuing injury to his professional career, unrecoverable educational delays, which questions "simply cannot be answered with-out a judgment about the value of the interests that would be lost through rigorous application of a final judgment requirement." *Digital Equipment Corp. v. Desktop Direct, Inc.*, 511 U. S. 863, 878-879 (1994).

The United States will not suffer any prejudice if an immediate appeal is granted because their interest lies in repayment of student loan. Dr. Jallali needs to be able to develop his defenses and have his counterclaims, yet with the status of the rulings made by the trial court, Dr. Jallali will be without any discovery devices, he will have no defense to the United States' action, and of course, Dr. Jallali will not be permitted to sue in third party. This certainly is an unfair state of affairs. Should any defendant have no right to a defense, to counterclaim, or to have discovery devices?

Dr. Jallali should be afforded an opportunity in the first court to require the offending university to answer for why it retains the monies that the United States paid –that is if Dr. Jallali is being pursued by the United States for the monies paid to the university by the United States.

CONCLUSION

For the foregoing reasons, this Court should GRANT certiorari and provide any relief as is deemed just and proper, if any there be at law.

Respectfully submitted,

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Case No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DR. MASSOOD JALLALI,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
Eleventh Circuit

APPENDIX

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INDEX TO APPENDIX

Appendix "A"
Appellate Order Denying Petition for Rehearing
(April 2, 2010)

Appendix "B"
Appellate Order Dismissing Appeal
(January 25, 2010)

Appendix "C"
Order Denying Motion for Reconsideration
(October 7, 2009)

Appendix "D"
Order on Discovery
(September 11, 2009)

Appendix "E"
Order Granting Plaintiff's Motion to Dismiss
Defendant's Counterclaim
(July 1, 2009)

Appendix "F"
Answer to Complaint
(January 20, 2009)

Appendix "G"
Complaint
(October 3, 2008)

Appendix "A"

Appellate Order Denying Petition for Rehearing

(April 2, 2010)

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED
US COURT OF APPEALS
ELEVENTH CIRCUIT
APR 2, 2010
THOMAS K. KAHN
CLERK

No. 09-16091-C

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

MASSOOD N. JALLALI,

Respondent-Appellant.

Appeal from the United States District Court for the Southern District of Florida

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ORDER:

Massood N. Jallali's February 2, 2010, motion for reconsideration of this Court's January 25, 2010, order dismissing Jallali's appeal for lack of jurisdiction is DENIED.

Appendix "B"

Appellate Order Dismissing Appeal

(January 25, 2010)

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED
US COURT OF APPEALS
ELEVENTH CIRCUIT
JAN 25, 2010
THOMAS K. KAHN
CLERK

No. 09-16091-C

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

MASSOOD N. JALLALI,

Respondent-Appellant.

Appeal from the United States District Court for the Southern District of Florida

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Before: CARNES, BARKETT, and MARCUS, Circuit Judges.

BY THE COURT:

This appeal is DISMISSED, sua sponte, for lack of jurisdiction, The district court's order entered on July 2, 2009, that granted Appellee's "Amended Motion to Dismiss

Counterclaim" and the order entered on October 8, 2009, that denied Appellant's motion for reconsideration are not final and immediately appealable because the orders did not dispose of all of the claims against all of the parties. *See* 28 U.S.C. §1291; Fed.R.Civ.P. 54(b); *Haney* v *City of Cumming,* 69 F.3d 1098, 1101 (11th Cir. 1995); *Williams* v, *Bishop,* 732 F.2d 885,885-86 (11th Cir. 1984); *Pitney Bowes, Inc,* v. *Mestre,* 701 F.2d 1365, 1368 (11th Cir. 1983); *Broussard* v, *Lippmall,* 643 F.2d 1131, 1133 (5th Cir. Unit A, Apr. 1981)."

No motion for reconsideration may be filed unless it complies with the timing and other requirements of 11th Cir. R. 27-2 and all other applicable rules.

Appendix "C"

Order Denying Motion for Reconsideration

(October 7, 2009)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-22774-CIV-SEITZ/O'SULLIVAN

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MASSOOD N. JALLALI,

Defendant.
_____/

ORDER DENYING
MOTION FOR RECONSIDERATION

THIS MATTER is before the Court on Defendant's Motion for Reconsideration of Order Granting Plaintiffs Motion to Dismiss Counterclaim [DE-30]. Defendant asserts that the Court erred in applying collateral estoppel because the case upon which the Court relied, *Jallali v. Nova Southeastern University, Inc.*, 992 So. 2d 338, 344 (4th DCA 2008) cert. denied 2009 WL 90331 (Fla. 2009), was not yet final because certiorari proceedings were pending before the United States Supreme Court. However, the Supreme Court has now denied certiorari, *Jallali v. Nova Southeastern University, Inc.*, __U.S.__, 2009 WL 1725897 (Oct. 5, 2009), and thus the case is now final. Accordingly, it is

ORDERED that Defendant's Motion for Reconsideration of Order Granting Plaintiff's Motion to Dismiss Counterclaim [DE-30] is DENIED.

DONE AND ORDERED in Miami, Florida this 7th day of October, 2009.

PATRICIA A. SEITZ
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record

Appendix "D"

Order on Discovery

(September 11, 2009)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-22774-CIV-SEITZ/O'SULLIVAN

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MASSOOD N. JALLALI,

Defendant.
_____/

ORDER

THIS MATTER is before the Court on the Law Clerks' Joint Motion to Quash and for Protective Order (DE# 33,7/21/09), the Plaintiff's Motion to Quash and Motion for Protective Order (DE# 34, 7/24/09) and Judge Barry J. Stone's Motion to Quash and for Protective Order (DE# 35, 8/6/09). Having reviewed the applicable filings and law and having held a hearing in this matter, it is

ORDERED AND ADJUDGED that the Law Clerks' Joint Motion to Quash and for Protective Order (DE# 33, 7/21/09), the Plaintiff's Motion to Quash and Motion for Protective Order (DE# 34,7/24/09) and Judge Barry J. Slone's Motion to Quash and for Protective Order (DE# 35, 8/6109) are all **GRANTED in part and DENIED in part** in

accordance with this Order. The Motions to Quash are all **GRANTED**. The information sought in the subpoenas is not relevant the case at hand. The Motions for Protective Order seeking to limit future discovery by the defendant are all **DENIED**.

DONE AND ORDERED in Miami, Florida this 11th day of September, 2009.

JOHN J. O'SULLIVAN
UNITED STATES MAGISTRATE JUDGE

Copies provided to:
United States District Judge Seitz

Appendix "E"

Order Granting Plaintiff's Motion to Dismiss
Defendant's Counterclaim
(July 1, 2009)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-22774-CIV-SEITZ/O'SULLIVAN

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MASSOOD N. JALLALI,

Defendant.
_____/

ORDER GRANTING AMENDED MOTION TO DISMISS COUNTERCLAIM WITH PREJUDICE

THIS MATTER is before the Court on Plaintiff, United States of America's Amended Motion to Dismiss Counterclaim [DE-26][1] to which Defendant Massood Jallali, *pro se*, has filed no response. The United States seeks to dismiss Massood Jallali's Counterclaim [DE-I7] based upon collateral estoppel, or issue preclusion, because the issue of whether Nova Southeastern University (Nova) acted arbitrarily and capriciously has been litigated and decided in the District Court of Appeal of Florida, Fourth District (Fourth DCA). Because all three counts of the

[1]The Plaintiff's Amended Motion to Dismiss Counterclaim [DE-26] answers the questions that led to the denial without prejudice of the first Motion to Dismiss Counterclaim [DE-24].

counterclaim require proof of Nova's arbitrary and capricious actions, the Counterclaim is barred by collateral estoppel and is dismissed with prejudice.

The United States filed a Complaint [DE-I] against Jallali to recover on a defaulted student loan. Jallali, in response, filed a three-count Counterclaim. Count I alleges that the United States was negligent in failing to protect Jallali from the arbitrary and capricious actions of a third party, namely Nova. The second count alleges that the United States negligently supervised Nova allowing it to act arbitrarily and capriciously. Count III alleges that the arbitrary and capricious actions of Nova constitute grounds for rescission of the student loan contracts between the United States and Jallali. Thus, for any of Jallali's claims to be successful, Nova's actions must have been arbitrary and capricious.

The United States asserts that all of these claims are precluded because they rest on Jallali's allegations that the United States failed to protect him from Nova's arbitrary and capricious actions, an issue decided in an earlier lawsuit between Jallali and Nova. In that suit, the Fourth DCA held that Nova's actions relating to Jallali were neither arbitrary and capricious nor done for a fraudulent purpose. *Jallali v. Nova Southeastern University, Inc.*, 992 So.2d 338, 344 (Fla. 4th DCA 2008) *cert. denied* 2009 WL 90331 (Fla. 2009). Therefore, the United States alleges that it cannot be found negligent for failure to protect Jallali from Nova's arbitrary and capricious actions and the Court cannot rescind the contract because Nova was not found to have acted arbitrarily and capriciously by the Fourth DCA. Thus, all three

counts of the Counterclaim are barred by collateral estoppel.

The Eleventh Circuit has established three prerequisites for collateral estoppel to preclude a claim: (I) the issue at stake must be identical to the one alleged in the prior litigation, (2) must have been actually litigated in the prior litigation, and (3) the determination of the issue must have been a critical and necessary part of the judgment in that litigation. *Mike Smith Pontiac, GMC, Inc. v. Mercedes-Benz of North America, Inc.*, 32 F.3d 528, 532 (11th Cir. 1994); *Greenblatt v. Drexel Burnham Lambert, Inc.*, 763 F.2d 1352, 1360 (11th Cir. 1985). Further, "issues actually litigated in a state court proceeding are entitled to the same preclusive effect in a subsequent federal suit." *Mercedes-Benz*, 32 F.3d at 532. Because Jallali's Counterclaim asserts that the United States failed to protect him from injury or damage caused by Nova's arbitrary and capricious refusal to issue his degree, it is asserting the same dispositive issues that were decided when the Fourth DCA held that Nova had not acted arbitrarily and capriciously. Thus, Jallali cannot prove that the United States was negligent nor rescind the contract without relitigating the identical issues previously litigated and decided adverse to him.

Further, the United States asserts that it was not negligent because it did not owe a duty to Jallali. To prove negligence in Florida, Jallali must "show that the [United States] owed a duty of care to [Jallali], that the [United States] breached the duty, that the breach caused [Jallali's] injury, and that damages are owed." *See Miles v. Naval Aviation Museum Foundation, Inc.*, 289 F.3d 715, 722 (11th Cir. 2002)

(citing *Ewing v. Sellinger*, 758 So. 2d 1196, 1197 (Fla. 4th DCA 2000). Here, Jallali avers that the United States owed a duty to protect Jallali from injury and to supervise Nova but does not set out the legal basis of that duty. Moreover, the United States has no authority or duty to direct, supervise or control Nova under 20 U.S.C. § 3403(b), which states:

> [n]o provision of a program administered by the Secretary or by any other officer of the Department shall be construed to authorize the Secretary or any such officer to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, over any accrediting agency or association, or over the selection or content of library resources, textbooks, or other instructional materials by any educational institution or school system, except to the extent authorized by law.

20 U.S.C. § 3403(b). Therefore, the United States did not owe a duty to Jallali and the two negligence claims, Counts I and II, must be dismissed for this additional reason.

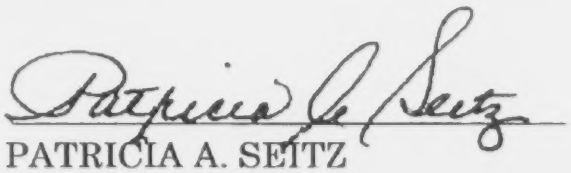
Consequently, Jallali's counterclaim is barred by collateral estoppel and by the absence of a legal duty owed to Jallali. Therefore, leave to amend the counterclaim would be futile as Jallali cannot state a cause of action on which relief can be granted. *See G&G TIC, LLC v. Alabama Controls, Inc.*, Case No. 08-15783,2009 WL 1101390 at *2 (11th Cir. 2009) (denying leave to amend on the grounds that amendment was futile). Accordingly, it is hereby

ORDERED that,

1. The United States' Motion to Dismiss Counterclaim [DE-26] is GRANTED.

2. Jallali's Counterclaim is DISMISSED with prejudice.

DONE AND ORDERED in Miami, Florida this 1st day of July, 2009.



PATRICIA A. SEITZ
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record/*Pro Se* Party

Appendix "F"

Answer to Complaint

(January 20, 2009)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-22774-CIV-SEITZ/O'SULLIVAN

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MASSOOD JALLALI,

Defendant.
_____/

DEFENDANT, MASSOOD JALLALI'S ANSWER, AFFIRMATIVE DEFENSES & COUNTERCLAIM

COMES NOW, Defendant/Counter-Plaintiff, MASSOOD JALLALI, and files this, his Answer, Affirmative Defenses and Counterclaim.[1]

I. ANSWER

1. Admitted as to jurisdiction.

2. Admitted as to residency.

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[1]The term "Title IV Institution" as used throughout this pleading refers to "[a]n eligible institution that meets the standards for participation in Title IV, HEA programs in [34 CFR] subpart B and has a current program participation agreement with the Secretary [of Education]." 34 CFR §668.2. The term "third-party Title IV Institution" as used throughout this pleading refers to Nova Southeastern University, Inc.

3. Admitted in part as to principle. Denied, in part, that Defendant should be required to repay the value of the loan, in that a third-party Title IV Institution arbitrarily and capriciously refused to issue the degree which Defendant earned, for which a third-party Title IV Institution received advanced payment from the proceeds of Defendant's student loan. Denied, in part, that interest and additional penalties should accrue upon this particular student loan for which Defendant did not derive an educational benefit, in that a third-party Title IV Institution arbitrarily and capriciously refused to issue the degree which Defendant earned. Admitted that Exhibit "A" attached to the complaint speaks for itself.

4. Admitted in part. Denied, in part, that Defendant should be required to repay the value of the loan, in that a third-party Title IV Institution arbitrarily and capriciously refused to issue the degree which Defendant earned, for which third-party Title IV Institution received advanced payment from the proceeds of Defendant's student loan.

5. Admitted that Defendant is not on active military duty. Admitted that Exhibit "B" attached to the complaint speaks for itself. Defendant lacks sufficient knowledge to admit or deny the remaining allegations of ¶5, and therefore in an abundance of caution, Defendant denies the remaining allegations of ¶5, with demand for strict proof thereof.

WHEREFORE, Defendant prays that judgment be entered in favor of Defendant; that Plaintiff take nothing by this action from Defendant, MASSOOD JALLALI.

II. AFFIRMATIVE DEFENSES

First Affirmative Defense

APPORTIONMENT/OFFSET

6. Defendant believes and thereon states that the debt/loan complained of in the complaint was proximately incurred, in whole or in part, by the acts or omissions of unnamed entities, a third party or parties. The amount that Defendant should be required to repay, if any, should be offset by the monetary value attributed to the acts of a third-party Title IV Institution, which arbitrarily and capriciously refused to issue the degree which Defendant earned, for which a third-party Title IV Institution received advanced payment from the proceeds of Defendant's student loan. Whereas, Defendant did not derive an educational benefit from the loan because of the arbitrary and capricious acts of a third-party Title IV Institution.

WHEREFORE, the liability of responsible parties, named or unnamed, should be apportioned according to their respective degrees of fault or other legal responsibility, and the liability, if any, of Defendant should be reduced accordingly.

Second Affirmative Defense

EQUITABLE ESTOPPEL

7. Defendant alleges that Plaintiff herein, and each and every Cause of Action contained in the

complaint, is barred by reason of acts, omissions, representations and courses of conduct by Plaintiff by which Defendant was led to rely to Defendant's detriment, thereby barring, under the doctrine of equitable estoppel, any Causes of Action asserted by Plaintiff; to wit: (a) Plaintiff failed to adequately supervise and regulate a third-party Title IV Institution; (b) the third-party Title IV Institution caused the totality of loan charges to be incurred, (c) third-party Title IV Institution arbitrarily and capriciously refused to issue the degree which Defendant earned, (d) for which the third-party Title IV Institution received advanced payment from the proceeds of Defendant's student loan; (e) whereas the United States owed a duty to regulate and properly supervised the third-party Title IV Institution's receipt of federal funding.

WHEREFORE, Defendant prays that judgment be entered in favor of Defendant; that Plaintiff take nothing by this action from Defendant, MASSOOD JALLALI.

Third Affirmative Defense

WAIVER

8. Defendant alleges that Plaintiff engaged in conduct constituting gross negligence that constitutes a waiver of Plaintiff's rights alleged in the complaint. By reason of said waiver, Defendant is excused from further performance of the obligations under the alleged contract, if any. To wit: (a) Plaintiff failed to adequately supervise and regulate a third-party Title IV Institution; (b) the third-party Title IV Institution

caused the totality of loan charges to be incurred, (c) third-party Title IV Institution arbitrarily and capriciously refused to issue the degree which Defendant earned, (d) for which the third-party Title IV Institution received advanced payment from the proceeds of Defendant's student loan; (e) whereas the United States owed a duty to regulate and properly supervised the third-party Title IV Institution's receipt of federal funding; (f) whereas Defendant suffered damages.

WHEREFORE, Defendant prays that judgment be entered in favor of Defendant; that Plaintiff take nothing by this action from Defendant, MASSOOD JALLALI.

Fourth Affirmative Defense

MUTUAL MISTAKE

9. Defendant alleges that if there presently exists or ever existed, any or all of the alleged rights, claims or obligations which Plaintiff seeks by way of their complaint, said claims or obligations are unenforceable by reason of mutual mistake; to wit: Plaintiff and Defendant in performance of the contract, reasonably relied upon a third-party Title IV Institution in receipt of federal funding payable towards Defendant's education; whereas the third-party Title IV Institution's acts and omissions were arbitrary and capricious, in that the third-party Title IV Institution accepted and retained the loan proceeds, yet refused to issue to Defendant the college degree which Defendant earned. The parties to the contract did not contemplate that the third-party Title

IV Institution would engage in acts and courses of conduct that would damage either party.

WHEREFORE, Defendant prays that judgment be entered in favor of Defendant; that Plaintiff take nothing by this action from Defendant, MASSOOD JALLALI.

III. COUNTERCLAIM

COUNT I
NEGLIGENCE

10. The United States, as the party who regulates and oversees the Federal Family Education Loan Programs, owed a duty to Counter-Plaintiff, MASSOOD JALLALI, to protect Counter-Plaintiff from injury or damage by the arbitrary and capricious acts of a third-party Title IV Institution.

11. The United States breached this duty.

12. The breach was the proximate cause of injury or damage to Counter-Plaintiff.

13. Counter-Plaintiff suffered damages in excess of $75,000.00 caused by the breach.

14. Counter-Plaintiff's damages continue to accrue.

WHEREFORE, Counter-Plaintiff, MASSOOD JALLALI, prays for entry of a judgment for damages,

with such other and further relief as is deemed just and proper.

COUNT II
NEGLIGENCE SUPERVISION

15. The United States regulates and oversees the Federal Family Education Loan Programs.

16. The United States was aware, or should have become aware, of acts or omissions of a third-party Title IV Institution that indicated unfitness or noncompliance with requirements of the Federal Family Education Loan Programs.

17. The United States owed a duty to Counter-Plaintiff to protect Counter-Plaintiff from injury or damage by the arbitrary and capricious acts of a third-party Title IV Institution.

18. The United States breached its duty by failing to take further action, such as investigation, discharge, or prosecution of the third-party Title IV Institution.

19. The United States' breach was the proximate cause of injury or damage to Counter-Plaintiff.

20. Counter-Plaintiff suffered damages in excess of $75,000.00 as a result of the breach.

21. Counter-Plaintiff's damages continue to accrue.

WHEREFORE, Counter-Plaintiff, MASSOOD JALLALI, prays for entry of a judgment for damages, with such other and further relief as is deemed just and proper.

COUNT III
RESCISSION

22. The United States regulates and offers student loans.

23. Counter-Plaintiff sought a student loan.

24. The parties executed several promissory notes, having the character of contract.

25. A third-party Title IV Institution received payments from the United States under the contract on behalf of college courses Counter-Plaintiff completed.

26. Counter-Plaintiff completed all of the requirements for graduation, but a third-party Title IV Institution arbitrarily and capriciously refused to issue the degree which Counter-Plaintiff earned.

27. Counter-Plaintiff did not derive an educational benefit nor benefit from the execution of the promissory note, in that a third-party Title IV Institution arbitrarily and capriciously refused to issue the degree which Counter-Plaintiff earned.

28. The circumstances constitute a ground for rescission or cancellation.

29. Plaintiff, by this Cause, notifies the United States of such rescission; whereas Plaintiff has no adequate remedy at law.

WHEREFORE, Counter-Plaintiff, MASSOOD JALLALI, prays for entry of a judgment of rescission, with such other and further relief as is deemed just and proper.

JURY TRIAL DEMAND

30. Defendant / Counter-Plaintiff, Massood Jallali, demands a trial by jury of each cause of action so triable.

IV. RESERVATION

31. Defendant/Counter-Plaintiff, Massood Jallali, reserves the right to file a Third-Party Complaint, naming Nova Southeastern University, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been served by First Class Mail upon: Aloyma M. Sanchez, AUSA (FBN #0717509), 99 Northeast Fourth Street, Third Floor, Miami, Florida 33132-2111, on this 20th day of January, 2009.

Respectfully submitted,

MASSOOD JALLALI

_____

Massood Jallali
Defendant/Counter-Plaintiff
2337 South University Drive
Davie, Florida 33324
Telephone: (954) 274-7454

Appendix "G"

Complaint

(October 3, 2008)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-22774-CIV-SEITZ/O'SULLIVAN

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MASSOOD N. JALLALI,

Defendant.
_____/

COMPLAINT

The United States of America, by and through the undersigned Assistant United States Attorney for the Southern District of Florida, alleges as follows:

1. This action is brought by the United States of America, with jurisdiction provided by 28 U.S.C. § 1345.

2. The Defendant, Massood Jallali, is a resident of the State of Florida.

3. The Defendant is indebted to the Plaintiff in the principal amount of $379,884.86, plus $96,829.49 interest on this principal amount computed at a variable rate of interest to be established annually in the amount of $476,714.35 as of May 28, 2008, plus

interest thereafter on this principal until the date of the judgment. *See* Exhibit "A" attached hereto.

4. Demand has been made upon Defendant by Plaintiff for the sum due, but the amount due remains unpaid.

5. Pursuant to the Soldier's and Sailor's Civil Relief Act of 1940, Mary M. Snavely-Dixon, Director, Department of Defense - Manpower Data Center, has researched and has advised that the Defendant, Massood N. lallali, is not on active Military Duty. See Military Status Report Exhibit "B" attached hereto.

WHEREFORE, Plaintiff prays for judgment against the Defendant for the total of $379,884.86 plus interest at a variable rate per annum on the principal amount of$476,714.35 to the date of judgment, plus costs. Plaintiff further demands, pursuant to 28 U.S.C, Section 1961, that interest on the judgment be at the legal rate until paid in full. Notice is hereby given to the Defendant that the Plaintiff intends to seek satisfaction of any judgment rendered in its favor in this action from any debt accruing.

Dated at Miami, Florida on this 3rd day of October, 2008.

Respectfully submitted,

R. ALEXANDAR ACOSTA
UNITED STATES ATTORNEY
\s\
Aloyma M. Sanchez (0717590)
Assistant U.S. Attorney